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CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 15th October, 2019

No. 13/1/9643-HII(2)-2019/16904.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 48/2015 dated 13.08.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

JARNAIL SINGH S/O SHRI MOHINDER SINGH, EX-DRIVER NO. 50-A, CTU R/O VILLAGE BADALI ALLA SINGH, TEHSIL & DISTRICT FATEHGARH SAHIB. (Workman)

AND

1. DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING-CUM DIRECTOR TRANSPORT UNION TERRITORY, CHANDIGARH.

2. GENERAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, DEPOT NO. I, CHANDIGARH.

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that in the year 1998 the management was in dire need of Drivers due to shortage of staff and most of the posts were lying vacant. For appointment of Drivers the management sent a requisition to the employment exchange and name of the workman was duly sponsored by the Employment Exchange for appointment as Driver under the management. The management had constituted a selection committee for appointment of Drivers. The workman was fulfilling the requisite qualification for appointment as Driver and was duly selected and recommended for appointment as a Driver by the selection committee. After the workman was appointed as Driver against a vacant post in December 1998 initially for 89 days. He was performing his duties with diligence and devotion throughout from the date of his appointment till his illegal termination on 15.12.2001. The workman had completed 240 days within twelve calendar months in each year. On 14.12.2001 during the course of duty bus of the workman met with an accident due to the negligent driving of tractor but the tractor driver being local got registered false FIR against the workman.

(159)

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Due to registration of false FIR services of the workman were discontinued in the month of December 2001 with an assurance that the workman shall be reinstated when acquitted by the Court. The workman faced the trial in the criminal case and he was acquitted on 27.10.2009 by the Court of Ms. Nandita Kaushik, JMIC, Ambala Cantt. After acquittal by JMIC, the workman made several request to management to take him back on duty but the management had not taken any steps in this respect till today. There are more than 500 workers working under the management and before terminating the services of the workman, the management had not complied with the provisions of Section 25-N of the ID Act and have not sought mandatory permission from the appropriate authority before terminating the services of the workman. The management had not complied with other terms of Section 25-N and 25-F of the ID Act. Neither mandatory notice was given to the workman before terminating his services nor he was paid wages in lieu of notice to the workman which was mandatory under the law. The management had also not complied with the provisions of Rule 77 of the Industrial Disputes Rules as the management had not framed a seniority list before terminating the services of the workman. The management had also violated the provisions of Section 25-G of the ID Act and had also not complied with principles of 'last come first go'. Many juniors to the workman were still working under the management when the services of the workman were terminated. The management had also violated the provisions of Section 25-H of the ID Act as the management had appointed many fresh persons as Driver without offering the same post to the workman being retrenched employee which was mandatory under the law. As per the law the employee of transport undertaking are governed under the Motor Transport Act so the provisions of the ID Act are applicable to the workers' working under the management. The workman had completed 240 days so he could not be terminated without complying with the provisions of the ID Act or holding regular inquiry. In case any instructions or provisions in other enactments, are contrary to the ID Act in that case the provision of the ID Act will prevail and any action taken by the management in violation of provisions of the ID Act under the garb of those enactments and instructions is void *ab initio* and cannot be sustained in the eyes of law. Even a daily wager and probationer cannot be terminated in the Government departments which fall under the ambit of the ID Act without complying with the provisions of the ID Act particularly Section 25-F, 25-G and 25-H of the ID Act. At the time when the services of the workman were terminated more than 50 posts are lying vacant and after terminating the services of the workman more than 50 Drivers were employed. In similar manner the management terminated the services of Shri Zora Singh and other Drivers with effect from 30.05.2007 and they challenged the illegal orders by raising demand notice and were ordered to be reinstated by the Labour Court, Chandigarh by holding that their termination is in violation of the ID Act. The management had challenged that award of the Labour Court before the Hon'ble High Court in cases of Zora Singh & Others and the Hon'ble High Court have dismissed the same. The workman is unemployed after his illegal termination. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages along with interest at the rate 12% per annum.

3. The management contested the case of the workman and filed written statement that the management had deployed some Drivers on the contract basis on consolidated salary only for 89 days in the year 1998/1999. The workman was never appointed by the selection committee. There is no termination order of the workman on record of the management. The workman never made any request to take him back on duty. More than five hundred workers are working under the management but question of compliance of Section 25 does not arise when the workman was not on roles of the management. Case of the Jora Singh & others is a matter of record. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the claim of the workman is time barred ? OPM
2. Whether the services of the workman were terminated illegally by the management, if so, to what and to what relief he is entitled to, if any ? OPW
3. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, learned Law Officer for the management closed the evidence without leading any evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE NO. 1 :

7. Onus to prove this issue was on the management but learned representative for the management has not pressed this issue during the course of argument. This issue is decided against the management being not pressed.

ISSUE NO. 2 :

8. Onus to prove this issue was on the workman and in order to prove the same learned representative for the workman examined the workman, who deposed that in the year 1998 the management had shortage of staff and his name was sent through Employment Exchange with regard to appointment of Driver. He was selected as Driver after fulfilling the requisite qualification and he was appointed as Driver against the vacant post in December 1998 initially for 89 days. The services of the workman was being terminated after nine months so he along with Nachattar Singh & Others filed OA No. 864/CH/99 titled as **Nachhatar Singh & Others Versus Union of India** before the Hon'ble Central Administrative Tribunal, Chandigarh and Hon'ble Central Administrative Tribunal had stayed the order of termination. He had performing his duties with diligence and devotion till his illegal termination on 15.12.2001. He had completed 240 days within twelve months in each year. On 14.12.2001 during the course of duty his bus met with an accident due to the negligent driving of the tractor and the tractor Driver being local person got false FIR registered against the workman. Due to registration of FIR his services were discontinued in the month of December 2001 with an assurance that he shall be reinstated when acquitted by the Court. He faced the criminal trail in criminal case and was acquitted on 27.10.2009 by Ms. Nandita Kaushik, JMIC, Ambala Cantt. Copy of judgment is Exhibit 'W2'. After acquittal he made several requests to the management to take back on duty but no steps were taken by the management. He further deposed that neither any notice was given nor any wages in lieu of notice was given by the management before terminating his service and no compliance was made under Section 25-N & 25-F of the ID Act. Many juniors to him are still working and fresh person as Driver were appointed. Hence the management has also violated the provisions of Section 25-G & 25-H of the ID Act. He further deposed that no person can be terminated retrenched without compliance of the ID Act. When his services were terminated at that time the work was in existence and many posts of Drivers were lying vacant. Hence termination of service of himself is illegal. Other Drivers Shri Zora Singh & Others were also terminated in violation of provisions of the ID Act but later on they were reinstated. Copy of award is Exhibit 'W3'.

8. Learned representative for the workman has argued that the services of the workman were terminated due to misconduct without issuing charge sheet and without holding regular inquiry which is illegal. Similar action has been declared illegally while deciding IDR No.73 of 2013 by this Court on 24.04.2019. He prayed for reinstatement of the workman with continuity of service and full back wages.

9. On the other hand, the management did not lead any evidence but learned Law Officer for management has argued that the services of the workman were dispensed with due to misconduct caused by the workman by way of accident with a rash & negligent driving. The workman had never made representation about his alleged acquittal. The management is not bound to reinstate him back on the service. He prayed for dismissal of the present industrial dispute.

10. After giving my carefully consideration to the rival contentions of both the sides, I find that admittedly the workman was appointed as Driver with the management on contract basis in the year 1998 and he was allotted Driver number 50-A. The accident was occurred with Trauli by the bus driven by the workman. The grudge of the workman is that he has been discontinued from service on the ground of misconduct without issuing charge sheet without holding inquiry.

11. Admittedly the workman is contractual employee but statutory rules have to be followed by the management in case of an employee even on contract basis in public service as principles of natural justice demands no one remains unheard. In this regard reliance is placed on authority titled as **Hiraben Jivanbhai Chaudhari Versus R. C. Raval, 1993(3) SCT 456**. In the cited case the Hon'ble Gujarat High Court in paragraph No. 8 followed the verdict passed by the Hon'ble Supreme Court in authority **Roshanlal Tandon Versus Union of India, AIR 1967 SC 1889**. Paragraph No. 8 is as under :—

“8. It shall have also to be accepted that when a contract of employment is entered into in case of Civil Service under the Union of India or the State or in case of Public Service, though originating in contract it becomes wholly statutory in status when the appointee enters the portals of Public Service. In the case of Roshanlal Tandon v. Union of India, reported in AIR 1967 SC 1889 the theory of status acquired by the Government servant is accepted in the following words:

“It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his right and obligation are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered ultimately by the Government. In others, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee..... But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest.”

12. The management is strongly relying upon FIR to hold the workman guilty but the workman cannot be held guilty merely on the registration of FIR. Charges have to be proved beyond shadow of reasonable doubt. In the present case neither any court has held that the workman was driving the bus in rash and negligent manner. In the authority **Chief Engineer, T. N. Electricity Board Versus Govindara M. (supra)** relied upon by learned representative for the workers' union Hon'ble Madras High Court was pleased to hold as under :—

“2. The enquiry report was read in Court and the learned counsel for the parties accepted it to be correct. It is not disputed that there is no specific finding by the Enquiry Officer with respect to the charge for theft against the respondent-workman on the basis of evidence on record. He was acquitted by the Criminal Court from the charge of theft. The only finding returned by the Enquiry Officer with respect to the charge of theft was an inference drawn by him from the fact that the respondent-workman was arrested and an F.I.R. was registered against him. It cannot be disputed that mere arrest or launching of an F.I.R. by itself cannot either constitute an evidence or proof or a circumstance based on which a person can be found to be guilty of the charge. It was accepted at the Bar that the finding returned by the Enquiry Officer on the charge of theft attributed to the delinquent workman cannot be sustained in any circumstances or on facts on record, much less by a quasi-judicial authority even administratively.”

The workman cannot be held guilty merely because an FIR was registered against him rather in present case as per the stand of the workman he has been acquitted in FIR. Thus the management has failed to prove that the workman was driving the bus in rash and negligent manner so as to impose the punishment of dispensing the services of the workman.

13. It is vehemently contended by learned representative for the workers' union that the workman cannot be discriminated and the management has to use similar yardstick for the same offence for every employee and he has relied upon authority *Tata Engineering & Locomotive Co. Limited Versus Jitendra Pd. Singh & Another (supra)* wherein Hon'ble Supreme Court of India was pleased to hold as under :—

“2.....What influenced the Court in deciding the matter is that : since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, though in separate proceedings, and one was punished with only one month's suspension, and the other was ultimately reinstated in view of the findings recorded by the Labour Court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the appellant if he alone is singled out for punishment by way of dismissal from service.”

In the light of above authorities and discussion made, it is held that the services of the workman were terminated in violation of provisions of Section 25-F of the ID Act and against the principles of natural justice. As such the workman is held entitled for reinstatement with continuity of service and 25% back wages. Accordingly, this issue is decided in favour of the workman and against the management.

RELIEF :

14. In the light of findings on the issue above, this industrial dispute is allowed. The workman is entitled for reinstatement with continuity of service and 25% back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.),

(ANSHUL BERRY),

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

The 13.08.2019.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 22nd October, 2019

No. 13/1/9644-HII(2)-2019/17260.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 05/2017 dated 13.08.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ASHWANI KUMAR S/O SHRI VIRENDER KUMAR, EX-DRIVER NO.86-A, CTU, CHANDIGARH R/O HOUSE No. 344, SAMADHI GATE, MANIMAJRA, UNION TERRITORY CHANDIGARH. (Workman)

AND

DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING-CUM-DIRECTOR
TRANSPORT, UNION TERRITORY, CHANDIGARH.

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that in the year 2003 the management was in dire need of Drivers due to shortage of staff and most of the posts were lying vacant. For appointment of Drivers the management sent a requisition to the employment exchange and also gave advertisement in 'Punjabi Tribune'. Name of the workman was duly sponsored by the Employment Exchange for appointment as Driver under the management. The management had constituted a selection committee for selection and appointment of Drivers. The workman was fulfilling the requisite qualification for appointment as Driver and was duly selected and recommended for appointment as a Driver by the selection committee. Thereafter the workman was appointed as Driver against a vacant post on 28.04.2004. He was also imparted training and his contract was also extended from time to time. He was performing his duties with diligence and devotion throughout from the date of his appointment till his illegal termination on 11.01.2006. The workman had completed 240 days within twelve calendar months in each year. On 11.01.2006 during the course of duty the workman was involved in false case of accident and false FIR against the workman was registered. Due to registration of false FIR services of the workman were discontinued on 16.01.2006 without any inquiry though junior were retained in service. The workman faced the trial in the criminal case and he was acquitted honourably on 22.01.2010 by the Court of JMFC, Panipat. After acquittal by JMFC, Panipat the workman made several request to management to take him back on duty but the management had not taken any steps in this respect till today. There are more than 500 workers working under the management and before terminating the services of the workman, the management had not complied with the provisions of Section 25-N of the ID Act and have not sought mandatory permission from the appropriate authority before terminating the services of the workman. No departmental inquiry was conducted. The management had not complied with other terms of Section 25-N and 25-F of the ID Act. Neither mandatory notice was given to the workman before terminating his services nor he was paid wages in lieu of notice to the workman which was mandatory under the law. The management had also not complied with the provisions of Rule 77 of the Industrial Disputes Rules as the management had not framed a seniority list before terminating the services of the workman. The management had also violated the provisions of Section 25-G of the ID Act and had also not complied with principles of 'last come first go'. Many juniors to the workman were still working under the management when the services of the workman were terminated. The management had also violated the provisions of Section 25-H of the ID Act as the management had appointed many fresh persons as Driver without offering the same post to the workman being retrenched employee which was mandatory under the law. As per the law the employee of transport undertaking are governed under the Motor Transport Act so the provisions of the ID Act are applicable to the workers' working under the management. The workman had completed 240 days so he could not be terminated without complying with the provisions of the ID Act or holding regular inquiry. In case any instructions or provisions in other enactments, are contrary to the ID Act in that case the provision of the ID Act will prevail and any action taken by the management in violation of provisions of the ID Act under the garb of those enactments and instructions is void *ab initio* and cannot be sustained in the eyes of law. Even a daily wager and probationer cannot be terminated in the Government departments which fall under the ambit of the ID Act without complying with the provisions of the ID Act particularly Section 25-F, 25-G and 25-H of the ID Act. At the time when the services of the workman were terminated more than 50 posts are lying vacant and after terminating the services of the workman more than 50 Drivers were employed. In similar manner the management terminated the services of Shri Zora Singh and other Drivers with effect from 30.05.2007 and they challenged the illegal orders by raising demand notice and were ordered to be reinstated by the Labour Court, Chandigarh by holding that their termination is in violation of the ID Act. The management had challenged that award of the Labour Court before the Hon'ble High Court in cases of Zora Singh & Others and the Hon'ble High Court have dismissed the same. The workman is unemployed after his illegal termination. Ultimately, it is prayed that order of dismissal dated 16.01.2006 be set aside and the workman be reinstated with continuity of service and full back wages along with interest at the rate 12% per annum.

3. The management contested the case of the workman and filed written statement that the workman had applied for the post of Bus Driver on the contract basis *vide* his application dated 31.10.2003 and after formal procedure the workman was appointed *vide* his appointment letter No. 5610/ECD/HOD/CTU/2004 dated 25.05.2004 whereby it was made clear that he was appointed on the consolidated salary of ₹ 6,472/- i.e. minimum time scale of ₹ 4,020/- + D.A. admissible on the date of deployment. The workman had performed his duty till the date 11.01.2006. The services of the workman were dispensed with *vide* order No.561/ECD/HOD/CTU/06, dated 16.01.2006 on the ground of accident which was caused by him on 10.01.2006 with a goods train at an unmanned railway crossing near Village Bijhol, Panipat as reported by the Inspectorate staff of the department and it was duly reported that the workman tried to cross the unmanned railway crossing even after noticing the goods train approaching at that time towards the unmanned crossing. Some passengers were also injured in that accident and bus was badly damaged due to rash & negligent driving of the workman. The workman was not a fit person to be retained in services in the department that is why the services were dispensed with *vide* order dated 16.01.2006. Since the workman was not a regular employee of the department so the provisions of the Punjab Civil Services Rules are not applicable in his case that is why the departmental inquiry was not held. The workman had never made even the single representation about his alleged acquittal by JMIC, Panipat. Even in the case of acquittal of the workman the management is not bound to reinstate him back in service as it was proved on record that on the date of accident i.e., on 10.01.2006, he was on duty with bus No. CH-01-G-5766 enroute No. 43 from Chandigarh to Rohtak and he caused an accident with a goods train wherein some passengers were injured and bus of the management was also badly damaged which caused a financial loss to the management. Section 25-N & 25-F of the ID Act is not applicable as the management is also a department of Government. Notice under Section 25-F of the ID Act was not required as the services of the workman were dispensed with on misconduct caused by the workman by way of accident due to rash & negligent driving. The management had appointed fresh persons as Driver in the management through public advertisement but he never approached or applied for the post of Driver in the management through open market. Case of Shri Jora Singh & Others – Drivers has no relevance with the present case as the facts of Jora Singh & Others Drivers are quite different than the case of the workman and their services contract and tenure are also different and the workman cannot take shelter or plea of the case of Jora Singh & Others. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what and to what relief he is entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Smt. Jyoti Sareen – Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE NO. 1 :

7. Onus to prove this issue was on the workman and in order to prove the same learned representative for the workman examined the workman, who deposed that in the year 2003 the management had shortage of staff and his name was sent through Employment Exchange with regard to appointment of Drivers and also advertisement was published in Punjabi Tribune. He was selected as Driver after fulfilling the requisite qualification and he was appointed as Driver against the vacant post on 28.04.2004. Copy of appointment letter is Exhibit 'W1'. He had performing his duties with diligence and devotion till his illegal termination. He had completed 240 days within twelve months in each year. Copy of termination letter is Mark 'A'. He filed appeal against the order of termination before the appellate authority. Copy of order of the appellate authority

is Mark 'B'. On 11.06.2006 he was involved in false case of accident and false FIR was registered against him due to registration of FIR his services were discontinued on 16.01.2006 without any inquiry. He faced the criminal trail in criminal case and was acquitted on 22.01.2010 by the Court of JMIC, Panipat. Copy of judgment is Exhibit 'W2'. After acquittal he made several requests to the management to take back on duty but no steps were taken by the management. He further deposed that no departmental inquiry was conducted and no compliance was made under Section 25-N & 25-F of the ID Act. Many juniors to him are still working and fresh person as Driver were appointed. Hence the management has also violated the provisions of Section 25-G & 25-H of the ID Act. He further deposed that no person can be terminated or retrenched without compliance of the ID Act. When his services were terminated at that time the work was in existence and many posts of Drivers were lying vacant. Hence termination of service of himself is illegal. Other Drivers Shri Zora Singh & Others were also terminated in violation of provisions of the ID Act but later on they were reinstated. Copy of award is Exhibit 'W3'.

8. Learned representative for the workman has argued that the services of the workman were terminated due to misconduct without issuing charge sheet and without holding regular inquiry which is illegal. Similar action has been declared illegal while deciding IDR No.73 of 2013 by this Court on 24.04.2019. He prayed for reinstatement of the workman with continuity of service and full back wages.

9. On the other hand, the management examined Smt. Jyoti Sareen – Senior Assistant as MW1, who deposed that the workman had applied for the post of Bus Driver on the contract basis his application dated 31.10.2003 after adopting formal procedure. The workman was appointed *vide* appointment letter No. 5610/ECD/HOD/CYU/2004 dated 25.05.2004 on consolidated salary. The services of the workman were liable to be dispensed with at any time without assigning any reason or giving any notice. The workman had performed his duty till 11.01.2006 and his services were not illegally terminated by the management rather his services were dispensed with *vide* order dated No. 561/ECD/HOD/CTU/06 dated 16.01.2006 upon the misconduct as he was on duty with bus No. CH-01-G-5766 enroute No. 43 (Chandigarh to Rohtak) and the said bus met with an accident with goods train at an un-manned railway crossing near Village Binjhol, Panipat and in the said accident some passengers of bus got injuries and bus was badly damaged due to rash and negligent driving of the workman. The workman was not regular employee of the department and Punjab Civil Services Rules were not applicable to the workman so the departmental inquiry was not held. The workman had never made representation about his alleged acquittal by JMIC, Panipat.

10. Learned Law Officer for management has argued that the services of the workman were dispensed with due to misconduct caused by the workman by way of accident with a rash & negligent driving. The workman had never made representation about his alleged acquittal. The management is not bound to reinstate him back on the service. He prayed for dismissal of the present industrial dispute.

11. After giving my careful consideration to the rival contentions of both the sides, I find that admittedly the workman had applied for the post of Bus Driver on contract basis and he was appointed *vide* appointment letter No.5610/ECD/HOD/CYU/2004 dated 25.04.2004. It is admitted fact that the workman had performed his duties upto 11.01.2006 and his services were dispensed with *vide* order No. 561/ECD/HOD/CTU/06 16.01.2006 on the ground of misconduct. He was on duty with bus No.CH-01-G-5766 enroute No. 43 from Chandigarh to Rohtak. The said bus met with accident on with goods train at an un-manned railway crossing near village Bijhol, Village Panipat. The grudge of the workman is that he has been discontinued from service on the ground of misconduct without issuing charge sheet without holding inquiry. The fact has been admitted by MW1 in her cross-examination that no charge sheet was issued to the workman and no departmental inquiry was conducted. She further admitted that it is correct that no show cause notice was issued under Section 25-F before terminating the services of the workman. No retrenchment compensation and pay in lieu of notice was given to the workman before terminating his services.

12. Admittedly the workman is contractual employee but statutory rules have to be followed by the management in case of an employee even on contract basis in public service as principles of natural justice demands no one remains unheard. In this regard reliance is placed on authority titled as **Hiraben Jivanbhai Chaudhari Versus R. C. Raval, 1993(3) SCT 456**. In the cited case the Hon'ble Gujarat High Court in

paragraph No. 8 followed the verdict passed by the Hon'ble Supreme Court in authority **Roshanlal Tandon Versus Union of India, AIR 1967 SC 1889**. Paragraph No. 8 is as under :—

“8. It shall have also to be accepted that when a contract of employment is entered into in case of Civil Service under the Union of India or the State or in case of Public Service, though originating in contract it becomes wholly statutory in status when the appointee enters the portals of Public Service. In the case of Roshanlal Tandon v. Union of India, reported in AIR 1967 SC 1889 the theory of status acquired by the Government servant is accepted in the following words:

“It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his right and obligation are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered ultimately by the Government. In others, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee..... But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest.”

13. The management is strongly relying upon FIR to hold the workman guilty but the workman cannot be held guilty merely on the registration of FIR. Charges have to be proved beyond shadow of reasonable doubt. In the present case neither any court has held that the workman was driving the bus in rash and negligent manner. In the authority **Chief Engineer, T. N. Electricity Board Versus Govindara M. (supra)** relied upon by learned representative for the workers' union Hon'ble Madras High Court was pleased to hold as under :—

“2. The enquiry report was read in Court and the learned counsel for the parties accepted it to be correct. It is not disputed that there is no specific finding by the Enquiry Officer with respect to the charge for theft against the respondent-workman on the basis of evidence on record. He was acquitted by the Criminal Court from the charge of theft. The only finding returned by the Enquiry Officer with respect to the charge of theft was an inference drawn by him from the fact that the respondent-workman was arrested and an F.I.R. was registered against him. It cannot be disputed that mere arrest or launching of an F.I.R. by itself cannot either constitute an evidence or proof or a circumstance based on which a person can be found to be guilty of the charge. It was accepted at the Bar that the finding returned by the Enquiry Officer on the charge of theft attributed to the delinquent workman cannot be sustained in any circumstances or on facts on record, much less by a quasi-judicial authority even administratively.”

The workman cannot be held guilty merely because an FIR was registered against him rather in present case as per the stand of the workman he has been acquitted in FIR. Thus the management has failed to prove that the workman was driving the bus in rash and negligent manner so as to impose the punishment of dispensing the services of the workman.

14. It is vehemently contended by learned representative for the workers' union that the workman cannot be discriminated and the management has to use similar yardstick for the same offence for every

employee and he has relied upon authority *Tata Engineering & Locomotive Co. Limited Versus Jitendra Pd. Singh & Another (supra)* wherein Hon'ble Supreme Court of India was pleased to hold as under :—

“2.....What influenced the Court in deciding the matter is that : since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, through in separate proceedings, and one was punished with only one month's suspension, and the other was ultimately reinstated in view of the findings recorded by the Labour Court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the appellant if he alone is singled out for punishment by way of dismissal from service.”

In the light of above authorities and discussion made, it is held that the services of the workman were terminated in violation of provisions of Section 25-F of the ID Act and against the principles of natural justice. As such the workman is held entitled for reinstatement with continuity of service and 25% back wages. Accordingly, this issue is decided in favour of the workman and against the management.

RELIEF :

15. In the light of findings on the issue above, this industrial dispute is allowed. The workman is entitled for reinstatement with continuity of service and 25% back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.),

(ANSHUL BERRY),

The 13.08.2019.

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 22nd October, 2019

No. 13/1/9531-HII(2)-2019/17307.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR (PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 85/2018, dated 14.08.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

BHARTIYA KAMGAR KARAMCHARI MAHASANGH (BK KM), 5174/B, SECTOR-38/W, CHANDIGARH (workers' union)

AND

1. ABBOTT INDIA LIMITED, 271, BUSINESS PARK, 6TH FLOOR, MODEL INDUSTRIAL COLONY, OFF ARREY ROAD, GOREGAON (E), MUMBAI – 400063, MAHARASHTRA, INDIA.

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2. ABBOTT HEALTHCARE (P) LIMITED, 4, CORPORATE PARK, SION-TROMBAY ROAD, CHEMBUR, MUMBAI – 400071, MAHARASHTRA, INDIA.

3. ABBOTT TRUECARE (P) LIMITED, D-MART BUILDING, GOREGAON MULUND LINK ROAD, MULUND WEST, MUMBAI – 400080, MAHARASHTRA, INDIA.

4. ABBOTT HEALTHCARE (P) LIMITED, THROUGH PUNEET CHAUDHARY, PLOT NO. 62, INDUSTRIAL AREA, PHASE-II, RAMDARBAR, CHANDIGARH (Management) referred to the said court by the Chandigarh Administration bearing Endorsement No.13/1/9531-HII(2)-2018/12424-27, dated 13.08.2018.

AWARD

1. Below mentioned Reference bearing Endorsement No.13/1/9531-HII(2)-2018/12426, dated 13.08.2018 received from the Secretary Labour, Chandigarh Administration is being disposed of :—

“Whether the demand raised in the demand notice dated 24.10.2014 by Bhartiya Kamgar Karamchhari Mahasangh (BKMM), 5174/B, Sector 38/W, Chandigarh And 1. M/s Abboott India Limited, 271, Business Park, 6th Floor, Model Industrial colony, off array Road, Goregaon (E), Mumbai – 400063, Maharashtra, India. 2. M/s Abboott Healthcare (P) Ltd., 4, M/s Abbott Healthcare (P) Ltd., through Puneet Chaudhary, Plot No. 62, Industrial Area, Phase – II, Ramdarbar, Chandigarh are genuine and justified. If so, to what effect and to what relief the Union / Workers are entitled to, if any ?”

2. The Bhartiya Kamgar Karamchhari Mahasangh (BKMM) (hereinafter called “workers’ union”) had served demand notice dated 24.10.2014 upon M/s Abbott India Limited & Others (hereinafter called “management”) under Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter called “ID Act”). The workers’ union could not be served for want of correct address. Case of the workers’ union as set up in the demand notice is that M/s Abbott Laboratories is global healthcare company and Abbott’s pharmaceuticals business in India has three units which include Abbott India Limited, Abbott Healthcare Private Limited and Abbott True Care Healthcare Private Limited. The workers’ union is registered trade union. The employees of the management are also members of the workers’ union. The state business of these members is governed by respective State Office and in this case the members placed in Chandigarh are governed by State Office, Chandigarh. The work profile of members of the workers union-cum-employees of the management (hereinafter called “workman”) is limited to promote the products of the company to the Doctors with an aim to convince the Doctors to prescribe the product, check the availability of the product at the nearing chemist and if there is any order gave it to the concerned stockiest, collect the sales record and expiries from the stockiest and sent it to the company for approval and other necessary action. The workmen were never worked in any supervisory capacity and no power of the management whatsoever was lie with the workmen. As per Sales Promotion Employees Act, 1976 the appointment of all the sales promotion employees are to be under Form ‘A’ described under the said act. However, the conduct of the company can be analyzed from the fact that the companies are not giving appointment in the desired Form ‘A’ to all its employees, while few of the workmen got it in the Form ‘A’, maximum number of the workmen are deprived off from the said benefits. Despite Section 9-C of the ID Act, no grievance redressal committee has been formed by the companies. The workmen are illegally forced to work on the days of religious and national importance. The workmen are discriminated even on the age of retirement i.e. in few cases it is 60 years while in few cases it is 58 years. Many times the lines Managers threatened the workmen to leave the union and the management take revenge from the employees who actively participate in the union activities. The workmen are being threatened to face consequences in view of *mala fide* transfers, stoppage of inputs and promotional material, synthetic decrease in sales, obstruction in growth, spoiling the image of the workmen and to further hamper the territory sales and manipulated terminations. The management in order to discriminate among the workmen, malafidely gave good salary hike to one set of worker and lesser increase to other workers. To hamper the member strength of the workers’ union, the management are not providing any further employment in the division named multi-speciality division however the working area of existing workers is regularly expanded any existing vacancies are filled by the

contract labour. The workmen are also threatened by the companies that their territories will be closed down on artificial and manipulative grounds under the guise of management policy. The workmen are afraid off by the present ill-policies of the companies. Ultimately, it is prayed that the services conditions of the workmen should be according to Form 'A' and legal settlement be ensured that they will not be ill-treated.

3. Upon notice, the management appeared through its authorised representative.

4. I have gone through the file carefully. In the present case, the reference received by this Court is as to whether the demands raised by the workers' union are genuine & justified. The workers' union could not be served for want of correct address. Accordingly, the present reference is dismissed in default for non-prosecution. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(ANSHUL BERRY),

The 14.08.2019.

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 22nd October, 2019

No. 13/1/9669-HII(2)-2019/17248.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 46/2018, dated 14.09.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

GABBAR SINGH, HOUSE NO. 100, NEAR SECTOR 48, MOTOR MARKET, VILLAGE FAIDA NIZAMPUR, CHANDIGARH (Workman)

AND

1. BAKSHI HOUSE KEEPING & PERSONAL SERVICE, HOUSE NO.1480, PUSHPAK SOCIETY, SECTOR 49-B, CHANDIGARH THROUGH ITS MANAGING DIRECTOR

2. RAYAN INTERNATIONAL SCHOOL, SECTOR 49-B, CHANDIGARH THROUGH ITS PRINCIPAL (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in nutshell is that he was appointed by management No. 1 as Conductor since eight year back and deployed as Conductor on the school buses of M/s Rayon International School, Sector 49, Chandigarh. He remained in continuous and uninterrupted employment upto 11.01.2018 when his services were illegally & wrongly terminated by refusing work. On 12.01.2018 the workman was refused work by management No.1 without assigning any reason & notice. Refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. Management No. 1 has also violated the provisions of

Section 25-F of the ID Act as no charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Ultimately, it is prayed that the workman be reinstated with continuity of service, full back wages and without any change in his service condition.

3. Management No.1 contested the case of the workman and filed written statement that the workman was working as Conductor with the management and was appointed eight years ago by the then management who was earlier contractor / management with Ryan International School, Sector 49-B, Chandigarh. The answering management had taken the contract with Ryan International School in the year 2014 and the services of all the employees of earlier employer were continued as it is with the management. The answering management never terminated the services of the workman as the contract of answering management has already completed in the month of December 2017 and the answering management had paid the salaries to the employees till December 2017. After completion of the contract of answering management, new management had entered into contract with school authorities in January 2018 and the workman had started working with the new management. Ultimately, it is prayed that the claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed:-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is bad for non-joinder of necessary parties ? OPM
3. Relief.

5. During the pendency of the present industrial dispute, learned representative for the workman made the following statement :—

“The present reference may be disposed of as finally settled and award may be passed accordingly..”

The case taken in Lok Adalat. In view of above statement of learned representative for the workman, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(ANSHUL BERRY),

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

The 14.09.2019.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 22nd October, 2019

No. 13/1/9670-HII(2)-2019/17316.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 47/2018, dated 14.09.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SUNIL, HOUSE NO. 1426, INDUSTRIAL AREA, PHASE — I, CHANDIGARH (Workman)

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AND

1. BAKSHI HOUSE KEEPING & PERSONAL SERVICE, HOUSE NO. 1480, PUSHPAK SOCIETY, SECTOR 49-B, CHANDIGARH THROUGH ITS MANAGING DIRECTOR.

2. RAYAN INTERNATIONAL SCHOOL, SECTOR 49-B, CHANDIGARH THROUGH ITS PRINCIPAL (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in nutshell is that he was appointed by management No.1 as Conductor on 15.11.2008 and deployed as Conductor on the school buses of M/s Rayon International School, Sector 49, Chandigarh. He remained in continuous and uninterrupted employment upto 11.01.2018 when his services were illegally & wrongly terminated by refusing work. On 12.01.2018 the workman was refused work by management No.1 without assigning any reason & notice. Refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. Management No.1 has also violated the provisions of Section 25-F of the ID Act as no charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Ultimately, it is prayed that the workman be reinstated with continuity of service, full back wages and without any change in his service condition.

3. Management No.1 contested the case of the workman and filed written statement that the workman was working as Conductor with the management and was appointed on 15.11.2008 by the then management who was earlier contractor / management with Ryan International School, Sector 49-B, Chandigarh. The answering management had taken the contract with Ryan International School in the year 2014 and the services of all the employees of earlier employer were continued as it is with the management. The answering management never terminated the services of the workman as the contract of answering management has already completed in the month of December 2017 and the answering management had paid the salaries to the employees till December 2017. After completion of the contract of answering management, new management had entered into contract with school authorities in January 2018 and the workman had started working with the new management. Ultimately, it is prayed that the claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is bad for non-joinder of necessary parties ? OPM
3. Relief.

5. During the pendency of the present industrial dispute, learned representative for the workman made the following statement :—

"The present reference may be disposed of as finally settled and award may be passed accordingly.."

The case taken in Lok Adalat. In view of above statement of learned representative for the workman, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(ANSHUL BERRY),

The 14.09.2019.

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 15th October, 2019

No. 13/1/9671-HII(2)-2019/16877.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 48/2018, dated 14.09.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

AJAY KUMAR, HOUSE NO.19/3, NEAR SECTOR 48, MOTOR MARKET, VILLAGE FAIDA NIZAMPUR, CHANDIGARH (Workman)

AND

1. BAKSHI HOUSE KEEPING & PERSONAL SERVICE, HOUSE NO. 1480, PUSHPAK SOCIETY, SECTOR 49-B, CHANDIGARH THROUGH ITS MANAGING DIRECTOR.

2. RAYAN INTERNATIONAL SCHOOL, SECTOR 49-B, CHANDIGARH THROUGH ITS PRINCIPAL (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in nutshell is that he was appointed by management No. 1 as Conductor three years back and deployed as Conductor on the school buses of M/s Rayon International School, Sector 49, Chandigarh. He remained in continuous and uninterrupted employment upto 11.01.2018 when his services were illegally & wrongly terminated by refusing work. On 12.01.2018 the workman was refused work by management No.1 without assigning any reason & notice. Refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. Management No.1 has also violated the provisions of Section 25-F of the ID Act as no charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Ultimately, it is prayed that the workman be reinstated with continuity of service, full back wages and without any change in his service condition.

3. Management No. 1 contested the case of the workman and filed written statement that the workman was working as Conductor with the management and was appointed in the year 2014-15 by the then management M/s Kartic Security & Detective Agency, who was earlier contractor / management with Ryan International School, Sector 49-B, Chandigarh. The answering management had taken the contract with Ryan International School in the year 2014 and the services of all the employees of earlier employer were continued as it is with the management. The answering management never terminated the services of the workman as the contract of answering management has already completed in the month of December 2017

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and the answering management had paid the salaries to the employees till December 2017. After completion of the contract of answering management, new management had entered into contract with school authorities in January 2018 and the workman had started working with the new management. Ultimately, it is prayed that the claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed:-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is bad for non-joinder of necessary parties ? OPM
3. Relief.

5. During the pendency of the present industrial dispute, learned representative for the workman made the following statement :—

“The present reference may be disposed of as finally settled and award may be passed accordingly..”

The case taken in Lok Adalat. In view of above statement of learned representative for the workman, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(ANSHUL BERRY),

The 14.09.2019.

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Rahul, s/o Anil Kumar, r/o 948, Ramdarbar, Phase-I, Chandigarh, have changed my name to Rahul Kumar.

[78—1]

I, Karamjeet Kaur *Alias* Karamjit Kaur, w/o Amrik Singh, # 2059-B, Sector 41-C, Chandigarh, have changed my name to Kamaljeet Kaur.

[79—1]

I, Pinky Bhardwaj, d/o Amar Singh, w/o Ashok Sharma, r/o 232/1, Sector 41-A, Chandigarh, have changed my name to Arpita Sharma after marriage.

[80—1]

नाम परिवर्तन

मैं, सौरभ, सुपुत्र अशोक कुमार, निवासी # 1850, सेक्टर 22-B, चंडीगढ़, मैंने अपना नाम Sourabh से बदलकर Saurabh रख लिया है और मेरे स्कूल रिकार्ड में मेरी माता का गलत नाम श्यामा दर्ज है जबकि सही नाम सन्तोष शर्मा है।

[81—1]

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